BEFORE THE SECRETARY OF STATE
STATE OF COLORADO

CASE NO. 0S 2003-022

AGENCY DECISION

IN THE MATTER OF THE COMPLAINT FILED BY MAC WILLIAMS REGARDING ALLEGED VIOLATIONS OF THE FAIR CAMPAIGN PRACTICES ACT BY RON TECK AND FRIENDS OF RON TECK

This matter is before the Administrative Law Judge on the complaint of Mac Williams (“Williams”) against Ron Teck ("Teck") and Friends of Ron Teck ("the Committee"). Teck and the Committee may be referred to collectively in this Agency Decision as "Respondents".

The complaint was filed with the Colorado Secretary of State on September 11, 2003 and an amended complaint was filed with the Colorado Division of Administrative Hearings on October 2, 2003. The complaint and amended complaint allege that Respondents violated certain provisions of Article 28 of the Colorado Constitution and the Fair Campaign Practices Act, Section 1-45-101 *et seq.*, C.R.S. (2003) ("the FCPA"). The Secretary of State transmitted the complaint to the Colorado Division of Administrative Hearings for the purpose of conducting a hearing pursuant to Colo. Const. art. XXVIII, sec. 9(2)(a).

The hearing in this matter was held in Denver, Colorado, on November 6, 2003, before Deputy Chief Administrative Law Judge Marshall A. Snider. Williams was present at the hearing and appeared without legal counsel. Respondents were represented by Richard A. Westfall, Esq. The Administrative Law Judge issues this Agency Decision pursuant to Colo. Const. art. XXVIII, sec. 9(1)(f), (2)(a) and Section 24-4-105(14)(a), C.R.S. (2003).

STATEMENT OF THE ISSUES

At the conclusion of the November 2002 general election the Committee had unexpended campaign contributions in its account in the amount of $19,233.50. In the following election cycle the Committee made certain payments from this fund and received additional contributions. Also in the next election cycle Teck announced and then withdrew a candidacy for the United States Congress. Respondents did not at that time terminate the Committee or amend the Committee's registration form on file with the Secretary of State. Based on these events Williams' amended complaint raises five issues:

1. Whether Respondents violated Colo. Const. art. XXVIII, sec. 3(3)(e) in the manner in which they reported unexpended campaign contributions.

2. Whether payments made by the Committee from the unexpended campaign contributions were improperly reported as expenditures, as that term is defined in Colo. Const. art. XXVIII, sec. 2(8)(a).

3. Whether the payment of legal fees from the unexpended campaign contributions was an unauthorized use of these funds in violation of Section 1-45-106(1), C.R.S. (2003).

4. Whether additional contributions received by the Committee in the new election cycle constituted a contribution by a political party in excess of the contribution limits in Colo. Const. art. XXVIII, sec. 3(3).

5. Whether the failure to amend the Committee's registration form or terminate the Committee after Teck announced that he would run for Congress violated Rule 23 of the Rules Governing Fair Campaign Practices Act, 8 CCR 1505-6.

PRELIMINARY MATTERS

1. The parties tried this case on the basis of the allegations contained in the Amended Complaint. Williams filed the Amended Complaint before Respondents filed an answer to the original complaint. Respondents then answered the Amended Complaint without objection to the amendment. Respondents therefore have consented to the amendment of the complaint. *See* C.R.C.P. 15 (a). Accordingly, the Administrative Law Judge grants Williams' motion to amend the complaint.

2. Williams issued a subpoena for the production of certain documents by Respondents. One group of documents produced pursuant to the subpoena consisted of bills from the law firm that represented both Teck and the Committee in an earlier FCPA proceeding initiated by Williams (Case No.OS 2002-031). The Administrative Law Judge admitted redacted versions of these bills into evidence (Exhibit 13) over the objection of Respondents. However, the Administrative Law Judge also issued the following protective orders regarding Exhibit 13:

A. Williams is prohibited from making any copies of the law firm bills that comprise Exhibit 13.

B. Williams is prohibited from disclosing the content of Exhibit 13 or discussing the content of Exhibit 13 with any person, except in the presentation of this case at hearing and in any subsequent appeals.

C. At the conclusion of this case and all appeals Williams shall return his single copy of Exhibit 13 to counsel for Respondents.

FINDINGS OF FACT

Based upon the evidence presented at the hearing and the admissions of the parties in the pleadings the Administrative Law Judge makes the following Findings of Fact:

1. Teck was a candidate in the November 5, 2002 general election for the office of Colorado State Senator in Senate District 7.

2. The Committee is a candidate committee registered with the Colorado Secretary of State. The purpose of the Committee, as stated in its registration form filed with the Secretary of State, was to elect Teck to the Colorado State Senate.

3. Teck was successful in his election bid. He has served as a senator in the Colorado General Assembly from January, 2003 through the present time, and continuing.

4. On September 15, 2003 Teck announced his candidacy to run for Congress from the Third Congressional District in Colorado. Teck filed documents with the Federal Election Commission indicating his intent to seek that congressional seat.

5. When Teck announced his candidacy to run for Congress the Committee did not amend its registration form filed with the Colorado Secretary of State to reflect the congressional candidacy, and the Committee did not terminate its existence at that time.

6. On October 6, 2003 Teck withdrew his announced candidacy for the Third Congressional District seat. Neither Teck nor the Committee opened a bank account for the congressional campaign and no contributions were accepted for that campaign.

7. The Committee has remained as an active Committee after the November 5, 2002 election and into the next election cycle that began on December 6, 2002.

8. On April 17, 2003 the Committee electronically filed a report of campaign contributions and expenditures with the Colorado Secretary of State. This report covered the period of December 1, 2002 through March 31, 2003. In this report the Committee accurately disclosed a balance of campaign funds as of December 1, 2002 in the amount of $19,233.50.

9. Prior to December 6, 2002 the Committee spent down its unexpended campaign funds to the amount of $18,000. The Committee took this action pursuant to its understanding of a November 26, 2002 notice from the Secretary of State that by

December 6, 2002 unexpended campaign fund balances must be reduced to 20% of the voluntary campaign limits pursuant to Colo. Const. art. XXVIII, sec. 3(3)(e).

10. The November 26, 2002 notice from the Secretary of State stated that "[P]ursuant to Section 3(3)(e) [of the Colorado Constitution] all unexpended candidate campaign contributions convert to political party contributions on December 6, 2002 and are subject to the same contribution limits [as apply to political party contributions]".

11. The unexpended funds held by the Committee at the start of the next election cycle on December 6, 2002 did not include any funds contributed by a political party. The Committee did not report these unexpended funds as a contribution from a political party in its April 17, 2003 report.

12. The Committee's April 17, 2003 report disclosed three contributions totaling $660.16 contributed to the Committee on December 1, 2002 and December 27, 2002. These contributions were not made by any political party and were not reported as contributions from a political party.

13. On July 14, 2003 the Committee electronically filed a report of campaign contributions and expenditures with the Colorado Secretary of State. In this report the Committee disclosed the following payments under the category of "Expenditures":

AMOUNT	PURPOSE	PAYEE
$435.25	Reimbursements	Teck
$410.00	Legal Fees	Hale Hackstaff
$200.00	Intern Assistance	Groves
$100.00	Intern Assistance	Washington
$100.00	Intern Assistance	Burgess
$1,964.41	Reimbursements	Teck
$319.44	Legal Fees	Hale Hackstaff

14. The payments to Groves, Washington and Burgess listed as "Intern Assistance" in the July 14 report were payments for the services of legislative interns and aides. The services of these interns and aides were directly related to Teck's official duties as an elected state senator in the 2003 session of the Colorado General Assembly. These interns did not engage in any campaign activity for Teck or the Committee.

15. The reimbursements to Teck listed in the July 14 report were made to reimburse Teck for expenditures he had made that were directly related to his official duties as an elected state senator in the 2003 session of the Colorado General Assembly, such as the costs of traveling to and attending meetings directly related to his official duties.

None of these expenditures were made for the purpose of advocating Teck's election to any office.

16. The payments for legal fees listed in the July 14 report were for legal fees paid to the law firm of Hale Hackstaff Tymkovich, LLP. These legal fees were paid for the representation of Teck and the Committee in defense of an earlier FCPA complaint brought by Williams and tried at the Division of Administrative Hearings (Case No. OS 2002-031).

17. The legal fees paid as reported in the July 14 report did not compensate Hale Hackstaff Tymkovich, LLP for any activity that advocated Teck's election to the state senate. These fees were paid solely for legal representation in the earlier FCPA case.

18. The evidence did not establish that Teck or the Committee failed to make a good faith effort to comply with the disclosure and reporting requirements of the campaign finance laws contained in the FCPA and Article 28 of the Colorado Constitution. From a consideration of all of the evidence a reasonable inference can be made that Teck and the Committee attempted in good faith to comply with these requirements and did not intend to mislead the public. The Administrative Law Judge therefore finds that Respondents attempted in good faith to comply with these requirements and did not intend to mislead the public.

DISCUSSION

In the November 5, 2002 election Colorado voters adopted Article 28 to the Colorado Constitution. This article deals with campaign finance and repeals some, but not all, of the provisions of the FCPA. Colo. Const., art. XXVIII, sec. 12. The resolution of some of the issues in this case requires the application of Article 28, and the resolution of other issues will be based upon the surviving provisions of the FCPA. Therefore, both the constitutional and statutory provisions will be applied, as appropriate, in resolving the issues raised by this complaint.

I. Reporting of Unexpended Campaign Contributions

Section 3(3)(d) of Article 28 provides that no political party shall contribute to any campaign committee more than 20 percent of the spending limit set forth in Section 4 of Article 28. The maximum political party contribution for a state senate race is therefore $18,000.00. *See* Sections 3(3)(d) and 4(1)(c) of Article 28. Section 3(3)(e) of Article 28 of the Colorado Constitution then provides as follows: "Any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election for purposes of paragraph (d) of this subsection (3)".

In its April 17, 2003 report the Committee disclosed a balance of campaign funds as of December 1, 2002 in the amount of $19,233.50. This balance was reduced to $18,000

by the start of the next election cycle on December 6, 2002. However, in this report the Committee did not explicitly report these unexpended funds as a contribution from a political party. Williams therefore argues that the Committee's report is not in compliance with Section 3 (3)(e).

The issue presented is thus whether the Committee "counted and reported" the unexpended campaign contributions as contributions from a political party when it accurately disclosed the amount of its unexpended campaign contributions but did not specifically list these funds in its report as a contribution from a political party. The answer to that question requires an interpretation of Section 3(3)(e) of Article 28 of the Colorado Constitution.

A. Article 28 of the Colorado Constitution was enacted by a vote of the people on November 5, 2002, to be effective December 6, 2002. *See* Colo. Const. art. XXVIII, sec. 13. In interpreting the state constitution courts first look at the language of a constitutional provision and if possible apply the provision according to its clear terms. *Havens v. Board of County Commissioners*, 58 P.3d 1165 (Colo.App. 2002). Words and phrases are to be given their ordinary, commonly understood meaning. *In Re Interrogatories on H.B. 99-1325,* 979 P.2d 549, 554 (Colo. 1999); *People v. Johnson*, 01CA1509 (Colo.App. May 8, 2003). When the language of the provision is plain and the meaning is clear, it should be interpreted and applied as written. *People v. Johnson, supra*. However, if the language contained in a citizen-initiated measure is ambiguous, a court may ascertain the intent of the voters by considering other relevant materials. *In Re Interrogatories on H.B. 99-1325, supra.*

In interpreting a provision of the state constitution it is presumed that a just and reasonable result was intended. *People v. Johnson, supra*. The provisions of the constitution are to be interpreted as a whole with effect given to every term contained in the provision. *Havens v. Board of County Commissioners*, 924 P.2d 517 (Colo. 1996). The goal is to determine and give effect to the intent of the electorate in adopting the measure. *Zaner v. City of Brighton,* 917 P.2d 280, 283 (Colo. 1996); *Bolt v. Arapahoe County School District No. 6*, 898 P.2d 525 (Colo. 1995). Any interpretation that results in an unreasonable or absurd result should be avoided. *Bickel v. City of Boulder*, 885 P.2d 215, 229 (Colo. 1994), *cert. den*. 513 U.S. 1155 (1995).

B. When read in isolation the meaning and intent of Section 3(3)(e) is difficult to apprehend. When no political party has contributed to a candidate committee, it is not clear how a committee can "report" a contribution as being from some unidentified political party. In addition, if (as Williams contends) unexpended campaign funds are to be itemized as a contribution, the report would inaccurately reflect the contributions received. That is, the report would show funds on hand at the beginning of the election cycle and, *in addition*, a fictional contribution from an unidentified political party. Such a report would artificially inflate the amount of funds available to a candidate committee and would be confusing to anyone who read the report.

Section 3(3)(e) can better be understood if the intent of the electorate is considered. Williams and Respondents agree that the intent of this provision is to eliminate the ability of candidates to amass large "war chests" of money from one election cycle to the next. Such an intent is consistent with the purpose of the campaign finance laws to reduce the influence of money on elections. *See* Colo. Const., art. XXVIII, sec. 1; Section 1-45-102, C.R.S. (2003).

Considering this electoral intent, and reading Section 3(3)(e) in the context of all of Section 3(3), a reasonable interpretation of Section 3(3)(e) appears. Section 3(3) of Article 28 deals exclusively with limits on contributions to and from political parties. Section 3(3)(d) places specific limits on the amount a political party can contribute to a candidate committee. Section 3(3)(e) states, in essence, that unexpended campaign funds are to be treated as a contribution from a political party. Therefore, reading Sections 3(3)(d) and 3(3)(e) together, the maximum amount that a political party may lawfully contribute to a candidate committee during an election cycle is reduced by the amount of unexpended campaign funds retained by the candidate committee at the end of the prior election cycle.[1]

To illustrate this interpretation, in the case of a senate candidate such as Teck $18, 000 is the maximum a political party can contribute to a senatorial candidate committee (Colo. Const. art. XXVIII, secs. 3(3)(d), 4(1)(c)). The Committee in this case held unexpended funds of $18,000 at the end of the election cycle. This $18,000 would be considered under Section 3(3)(e) as a contribution from any political party. Thus, no political party could contribute any money to a Teck senatorial campaign in the next election cycle; the $18,000 in unexpended contributions is considered a political party contribution, and that $18,000 is the maximum any political party can contribute.[2]

C. Therefore, the purpose of Section 3(3)(e) is to limit contributions of political parties to a candidate committee in a subsequent election cycle based upon the amount of campaign funds that committee has carried over from the previous cycle. That provision promotes the purpose of Article 28 by limiting the ability of a candidate committee to accept a large contribution from a political party every election cycle, regardless of how little is spent by the candidate committee during the previous election cycle, in order to amass an ever growing fund for future elections.

However, the issue in the present case is not whether a political party made an excess contribution. The sole issue here is whether the Committee reported its

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1. The November 26, 2002 notice from the Secretary of State provided that all unexpended candidate campaign contributions convert to political party contributions on December 6, 2002 and are subject to the same contribution limits as apply to political party contributions. Findings of Fact, Paragraph 10. The Administrative Law Judge's interpretation of Section 3(3)(e) is consistent with this notice from the Secretary of State. An agency's construction of the law it administers is entitled to great weight. *See Janssen v. Industrial Claim Appeals Office,* 40 P.3d 1 (Colo. App. 2001); *Mile High Greyhound Park, Inc. v. Colorado Racing Commission,* 12 P.3d 351 (Colo. App. 2000).

2. As another example, if the Committee's unexpended campaign funds amounted to $15,000 at the end of the election cycle, a political party could not contribute more than $3,000 to the Committee in the next election cycle.

unexpended funds as required by Section 3(3)(e). As noted above in Section I, B of this Discussion, a literal reading of this section's reporting requirement would lead to an unreasonable result. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the report. Such an interpretation of the constitution that results in an unreasonable or absurd result should be avoided. *Bickel v. City of Boulder*, *supra*.

To accomplish the purpose of Section 3(3)(e) it is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. Once reported, it is possible to then compute the amount, if any, that a political party can contribute to that committee in the next election cycle. The Committee in this case accurately reported the amount of its unexpended funds at the end of the election cycle on December 5. By operation of law these funds were to be considered as a political party contribution. The Committee therefore met the requirements of Section 3(3)(e) by reporting the amount of unexpended campaign funds on hand at the end of the election cycle that would be considered as a contribution from a political party. Requiring the Committee to also explicitly state that these funds are a contribution from a political party (as Williams would require) is unnecessary, artificial and leads to an unreasonable or absurd result.

D. Even if Williams is correct that the report of unexpended campaign funds must explicitly state that these funds are a contribution from a political party, Respondents substantially complied with Section 3(3)(e), and therefore are not in violation of that provision. A rule of substantial compliance with a statute will apply when such a rule serves the purposes of the statute. *Charnes v. Norwest Leasing, Inc.,* 787 P.2d 145 (Colo. 1990). As related to campaign finance laws, unless a regulation expressly declares that strict compliance with its requirements is essential, a substantial compliance standard is applicable. *See Bickel v. City of Boulder*, *supra* at 226-27. A substantial compliance standard in the present case is sufficient to achieve the purpose of the campaign finance laws to reduce the influence of money on elections. *See* Colo. Const., art. XXVIII, sec. 1; Section 1-45-102, C.R.S. (2003). A strict compliance test, on the other hand, would subject candidates and candidate committees to potential penalties when penalties are not necessitated by the purposes of Amendment 28. The Administrative Law Judge therefore concludes that a substantial compliance analysis, rather than a strict compliance test, is the appropriate standard to be applied in the present case.

In the context of complying with laws regulating elections and initiatives, substantial compliance is measured by the following considerations: (1) the extent of the non-compliance; (2) whether the purpose of the law is substantially achieved despite the non-compliance; and (3) whether a reasonable inference can be made that a good faith effort has been made to comply with the law (as opposed to an intent to mislead the electorate). *Bickel v. City of Boulder*, *supra* at 227; *Loonan v. Woodley*, 882 P.2d 1380, 1384 (Colo. 1994). Applying a substantial compliance analysis to this case, the extent of any non-compliance was minimal. In its April 17, 2003 report the Committee accurately disclosed a

balance of campaign funds on December 1, 2002 in the amount of $19,233.50. From this figure a person reading the report would know the amount of unexpended campaign contributions and could determine the effect of that amount on limiting subsequent political party contributions. For this same reason, the purpose of the Section 3(3)(e) was substantially achieved by this disclosure. A person reading this report would know how much money the Committee had on hand at the end of one election cycle and therefore how much a political party could contribute in the next cycle. Finally, the Committee and Teck made a good faith effort to comply with the law and did not intend to mislead the public (Findings of Fact, Paragraph 18). The Administrative Law Judge therefore concludes that Teck and the Committee substantially complied with the reporting requirements of Section 3(3)(e) of Article 28.

E. For the reasons set forth in Part I of this Discussion the Administrative Law Judge concludes that Respondents have not violated Section 3(3)(e) of Article 28 in the manner that they reported unexpended campaign contributions.

II. Report of Expenditures

In its July 14, 2003 report the Committee disclosed the following payments: reimbursements to Teck; payment of legal fees; and payments to legislative interns and aides. These disclosures were reported under the category of "Expenditures". The definition of the word "expenditure" in Section 2(8)(a) of Article 28 is a payment of money "for the purpose of expressly advocating the election or defeat of a candidate". Williams reasons that the payments to Teck, the interns and aides, and the lawyers were not for the purpose of advocating the election or defeat of a candidate and that, therefore, these payments were not "expenditures". Accordingly, Williams claims that these payments could not properly be listed in a campaign finance report under the category of "Expenditures" and that the July 14 report thus violated Section 2(8)(a) of Article 28.

Williams further claims that it is a violation of the FCPA for a candidate and a candidate committee to use unexpended campaign funds to pay for attorneys to represent them in a case before the Division of Administrative Hearings involving their alleged FCPA violations.

A. The FCPA explicitly permits a person elected to a public office to use unexpended campaign contributions to pay expenses directly related to that person's official duties as an elected official. Section 1-45-106(1)(b)(V), C.R.S. (2003). The reimbursements to Teck and the payments to interns and aides were directly related to Teck's official duties as an elected state senator in the 2003 session of the Colorado General Assembly. Findings of Fact, Paragraphs 14, 15. These payments were therefore explicitly permitted under the FCPA.

It is true that the definition of "expenditure" in Section 2(8)(a) of Article 28 states that an expenditure is "for the purpose of expressly advocating the election or defeat of a candidate". Nevertheless, the constitutional and statutory provisions regarding campaign finance reporting must be read as a whole, to achieve the intent of those provisions and to reach a reasonable result feasible of execution. Section 2-4-201(1)(c), (d), C.R.S. (2003); *Bickel v. City of Boulder*, *supra*; *Smith v. Zufelt,* 880 P.2d 1178, 1185 (Colo. 1994)*; People v. Johnson, supra* (in interpreting the state constitution it is presumed that a just and reasonable result is intended); *Havens v. Board of County Commissioners, supra*, 924 P.2d 517 (interpret provisions as a whole); *Bolt v. Arapahoe County School District No. 6*, *supra* and *Martinez v. Continental Enterprises,* 730 P.2d 308, 315 (Colo. 1986)(determine and give effect to the intent of the drafters). If possible, the constitutional and statutory provisions should be harmonized to give a consistent effect to all of their parts. *See Zaner v. City of Brighton, supra; Bickel v. City of Boulder, supra; Martinez v. Continental Enterprises, supra.* Further, the intent of the drafters will prevail over a literal interpretation that would lead to an absurd result. *AviComm, Inc. v. Colorado Public Utilities Commission*, 955 P.2d 1023, 1031 (Colo. 1998).[3]

If Williams' argument were accepted a candidate committee could not disclose as expenditures payments it had made directly related to an elected official's duties, even though those expenditures are specifically authorized by Section 1-45-106(1)(b)(V) of the FCPA. By disclosing these payments as expenditures the Committee reported accurately and clearly that it had expended funds as authorized by the FCPA. To do otherwise would have defeated the statutory and regulatory requirements to report payments made from campaign funds (Section 1-45-108 (1)(a)(I), (2)(b), C.R.S. (2003); Section 24.3, Rules Concerning Fair Campaign Practices Act, 8 CCR 1505-6). To interpret Section 2(8)(a) of Article 28 literally to require a candidate committee to report these payments as something other than an expenditure, or not at all, would lead to an unreasonable and absurd result and defeat the purpose of the law of clear and complete reporting.

B. In any event, Respondents substantially complied with the campaign finance laws by reporting these payments as "expenditures". *Bickel v. City of Boulder*, *supra*; *Loonan v. Woodley*, *supra*. A person reading the Committee's July 14 report would be able to determine the payments made and their purpose. The extent of the noncompliance, if any, was therefore not great and the disclosure goals of the campaign finance laws were substantially achieved by this report. Further, the Respondents made a good faith effort to comply with the law and did not intend to mislead the public (Findings of Fact, Paragraph 18). The Administrative Law Judge therefore concludes that at a minimum Respondents substantially complied with the requirements for reporting expenditures and did not violate Section 2(8)(a) of Article 28.

C. Williams also asserts that the payments to a law firm for representation in a prior FCPA case were not permitted under the FCPA and were improperly reported as

3. The above principles are applicable to interpreting both the constitutional and statutory provisions relevant to this issue. *See Bickel v. City of Boulder*, 885 P.2d 215, 228 n. 10 (Colo. 1994) (rules of statutory interpretation may be used in interpreting citizen initiated constitutional measures).

"Expenditures". As pertinent to this case, Section 106(1) of the FCPA provides as follows:

> (1)(a)(I) Unexpended campaign contributions to a candidate committee may be:
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> (A) Contributed to a political party;
> (B) Contributed to a candidate committee established by the same candidate for a different public office . . . ;
> (C) Donated to a charitable organization . . . ;
> (D) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent campaign.
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> (II) In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate. . . .
>
> (1) (b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:
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> (I) Voter registration;
> (II) Political issue education . . . ;
> (III) Postsecondary educational scholarships;
> (IV) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;
> (V) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone and pager expenses.

Payments for legal fees in FCPA cases are not explicitly mentioned in Section 106(1) as an allowable use of unexpended campaign funds. However, reading this provision as a whole the Administrative Law Judge concludes that Section 106(1) does not set forth an exclusive list of purposes for which unexpended campaign funds may be spent.

Section 106(1)(a) describes some permissible uses of unexpended campaign funds. That list is not exclusive; Section 106(1)(b) also describes additional uses of these funds. More importantly, Section 106(1)(a)(II) states that "[I]n no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate". If the permitted uses of unexpended campaign funds described in Section 106(1) were intended to be the only permissible uses of these funds there would be no need for the additional language in Section 106(1)(a)(II). If the stated

uses were the only ones permitted, and no others were allowed, it would be unnecessary for the statute to also provide that the use of funds for personal purposes was prohibited.

Therefore, Section 106(1) does not by its terms exclude the use of unexpended campaign funds for legal representation in an FCPA case, unless that legal representation were considered to be for a "personal purpose" not reasonably related to supporting the election of the candidate (as prohibited by Section 106(1)(a)(II)). The Administrative Law Judge concludes that payments by a candidate or candidate committee for legal representation in response to a complaint filed under Article 28, Section 9 of the Colorado Constitution or, as in this case, former Section 1-45-111 of the FCPA, are not payments for a personal purpose and are reasonably related to supporting the election of the candidate.

The statute does not define a "personal purpose." However, the word "personal" must be given its commonly understood meaning. Section 2-4-101, C.R.S. (2003); *Mason v. Adams,* 961 P.2d 540, 543 (Colo. App. 1997). A purpose is personal when it is private or individual. Merriam-Webster On-Line Dictionary, 10th Ed. (2003); Webster's New Twentieth Century Dictionary, 2d Ed. (1983). A candidate and candidate committee defending themselves from a complaint under Article 28 or the FCPA are engaged in an activity that does not arise from the candidate's personal, private or individual life. Rather, the activities involved in complying with Article 28 and the FCPA are particularly public activities brought about by the legal requirement that candidates for public office act in accordance with these laws. The filing of a complaint against a candidate or committee is the primary mechanism to enforce the campaign finance and disclosure laws. *See* Colo. Const. art. 28, sec. 9(2)(a). A candidate and candidate committee that are charged with violating these laws may not be able to establish their compliance with legal requirements without participating in the hearing of the complaint. Incurring legal fees for that participation would not have been necessary but for the candidacy. Paying for legal representation in the complaint process, therefore, is not a personal, private or individual purpose, but is intertwined with the public function of campaign finance law compliance and enforcement and is not unreasonably related to the candidate's election.

The prohibition against the use of unexpended campaign funds for personal purposes not reasonably related to supporting the election of the candidate is more sensibly applied to acts such as purchasing a television for a candidate's home, purchasing clothes for his family and similar expenditures. Payment of an expense that is so closely associated with the candidacy and campaign finance law compliance, such as the legal fees in an FCPA case, is not analogous to those purely personal expenditures that bear no relationship to the electoral process.

The Administrative Law Judge therefore concludes that Respondents were not prohibited from using unexpended campaign funds to pay for their legal representation in the prior FCPA case. In addition, as determined in Sections II, A and B of this Discussion, Respondents did not violate Article 28 of the Constitution by reporting these payments as an expenditure.

III. The $660.16 of Contributions in December, 2002

Williams asserts that by accepting $660.16 in contributions in December, 2002, the Committee exceeded the $18,000 limit on campaign contributions from political parties, because the Committee was already holding $18,000 in campaign funds from the prior election cycle. This argument misreads Amendment 28.

Section 3 of Amendment 28 limits *contributions* to a candidate committee. The amendment does not limit how much money a committee can collect, as long as it does not collect more than what is allowed from a particular contributor. There is no limit on what a candidate committee can spend, unless the candidate voluntarily chooses to abide by spending limits. Colo. Const., art. XXVIII, sec. 4. Williams points to no provision of law that prohibits a senatorial candidate committee from collecting lawfully contributed funds in excess of $18,000.

As determined in Section I, B of this Discussion, Section 3(3)(e) provides that unexpended campaign funds held by a candidate committee at the end of an election cycle are to be treated as a contribution from a political party and the amount that a *political party* may contribute to the candidate committee in a subsequent election cycle is accordingly reduced by the amount of these unexpended campaign funds. The $18,000 maximum for a senate campaign is thus a limit on the contributions by *political parties*. Colo. Const. art. 28, sec. 3(3)(d). None of the $660.16 contributed to the Committee in December, 2002 came from a political party. There was no legal prohibition preventing the Committee from accepting contributions in excess of the $18,000 in unexpended funds, as long as a political party did not make those additional contributions. *Id.*

IV. Termination of the Candidate Committee

Williams' final claim is that Respondents violated the rules of the Colorado Secretary of State when the Committee did not amend its registration form or terminate its existence when Teck announced his intent to run for Congress. Section 23.2 of the Rules Concerning Fair Campaign Practices Act, 8 CCR 1505-6, requires that a change in the information disclosed on a committee's registration form must be reported within 5 days by filing an amended registration form. Rule 23.3 provides that a committee *may* terminate if, among other requirements, it no longer intends to receive contributions or make expenditures and has no cash on hand or outstanding debts.

A. As applied to candidates, Article 28 applies only to elections for state or local public office. Colo. Const. art. XXVIII, sec. 2(2), (3) (a "candidate" is a person who seeks election to a state or local public office and a "candidate committee" is a person or persons who receive contributions or make expenditures under the authority of such a candidate). Amendment 28 therefore does not apply to candidates for federal office. In running for Congress Teck did not seek an office covered by Article 28. Accordingly, the fact that Teck announced his candidacy for Congress did not require an amendment to the Committee's registration form. Teck still had an active candidate committee with the same purpose relative to Article 28 as before; to run for the state senate. Respondents did not violate Section 23.2 of the rules by not amending the Committee's registration form to reflect the congressional bid.

B. Similarly, Respondents were not required to terminate the Committee under Rule 23.3. Nothing in the wording of that rule requires termination of the Committee under the circumstances in this case. In fact, the Committee is still active and under Rule 23.3 the Committee is not permitted to terminate because it still holds funds.

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction over the parties and the subject matter of this complaint. Colo. Const. art. XXVIII, sec. 9(1)(f), 2(a).

2. Respondents did not violate Colo. Const. art. XXVIII, sec. 3(3)(e) in the manner in which they reported unexpended campaign contributions.

3. Payments made by the Committee from the unexpended campaign contributions were properly reported as expenditures, as that term is defined in Colo. Const. art. XXVIII, sec. 2(8)(a).

4. The payment of legal fees from unexpended campaign contributions was not an unauthorized use of those funds. Section 1-45-106(1), C.R.S. (2003).

5. Additional contributions received by the Committee in the new election cycle did not constitute a contribution by a political party in excess of the contribution limits in Colo. Const. art. XXVIII, sec. 3(3)(d).

6. Respondents did not violate Rule 23 of the Rules Governing Fair Campaign Practice Act, 8 CCR 1505-6 when they did not amend the Committee's registration form or terminate the Committee after Teck announced that he would run for Congress.

AGENCY DECISION

1. It is the Agency Decision that Teck and the Committee have not violated the FCPA or Article 28 of the Colorado Constitution in any respect alleged in the Amended Complaint. The complaint is dismissed.

2. In their Answer to Amended Complaint and at hearing Respondents requested attorney fees and costs. Respondents are granted 20 days from the date of this Agency Decision to file any such request and supporting documents or argument. If such a request is filed, Williams may file a response to the request within 20 days. In that event, the final order of the Administrative Law Judge pursuant to Colo. Const. art. XXVIII, sec. 9(2)(a) and Section 24-4-106 (11)(b), C.R.S. (2003) will be deemed to have been entered on the date the Administrative Law Judge rules on the request for attorney fees and costs. If no request for attorney fees or costs is filed within 20 days the final order of the Administrative Law Judge pursuant to Colo. Const. art. XXVIII, sec. 9(2)(a) and Section 24-4-106 (11)(b), C.R.S. (2003) will be deemed to have been entered 20 days from the date this Agency Decision is signed.

Dated: November_____, 2003

_____
MARSHALL A. SNIDER
Deputy Chief Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that I have served a true and correct copy of the above **AGENCY DECISION** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

Mac Williams
P.O. Box 546
Clifton, CO 81520

Richard A. Westfall, Esq.
1430 Wynkoop Street
Suite 300
Denver, CO 80202

William Hobbs
Deputy Secretary of State
1560 Broadway
Suite 200
Denver, CO 80202

on this ___ day of November, 2003.

_____
Secretary to Administrative Law Judge

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